

## GUIDANCE FOR DRAFTING LEGISLATIVE PROPOSALS

1. **GENERAL STYLISTIC APPROACH.**—When drafting legislative proposals for the Department of Defense, follow the style in recent National Defense Authorization Acts (NDAAs). The answer to almost any stylistic question can be found by reviewing a recently-enacted NDAA. Links to every NDAA from fiscal year 1996 through fiscal year 2009 are on the OLC website, <http://www.dod.mil/dodgc/olc/>. The FY10 NDAA (P.L. 111-84) can be found on the Government Printing Office's website (<http://www.gpoaccess.gov/plaws/index.html>).
2. **PROPOSALS PREVIOUSLY SUBMITTED.**—For a proposal that has been submitted previously, take advantage of the work done with respect to the proposal after it originally left your organization and work from the latest version of the proposal on the OLC website, not the version your organization initially sent to OLC. In addition, if the proposal was approved by either the House or the Senate in its version of the NDAA, that would be a good version to work from for style and format.
3. **TO CODIFY OR NOT TO CODIFY.**—Some legislative proposals would make a permanent change to current law or provide a permanent authority, while others would provide only temporary authority or extend existing stand-alone authority. A proposal that would make a permanent change or establish a permanent authority generally should be prepared as an amendment to title 10, United States Code, or another permanent law (in other words, “codified”), rather than as a stand-alone provision. A proposal should be codified when the proposal is (1) permanent, and (2) of general applicability.
4. **UNDERSTANDING CONTEXT OF EXISTING LAW BEING AMENDED.**—When drafting amendments to an existing body of law (such as title 10, U.S.C., or the Small Business Act), be aware of the entire context of the law being amended. For example, certain matter that you may need for your proposal, such as definitions, may already be part of the law. On the other hand, a term that you are planning on using may already be defined in a way that is inconsistent with your intent, suggesting the need for a different term or an exception to the otherwise-applicable definition.
5. **VESTING FUNCTIONS, DUTIES, ETC., IN OFFICERS.**—Functions and authorities should be vested in officials, not in offices or organizations. For example, authority should be vested in the Secretary of Defense, not in the Department of Defense. In addition, the official to be vested by law with an authority should be the Secretary of Defense or the Secretary of a military department, not a subordinate officer.
6. **THINK AHEAD.**—Remember that a provision speaks as of enactment (or later), not the time when you are drafting it or while it is in the process of being enacted.
7. **EXTENSION OF AUTHORITY PROVISIONS.**—When drafting an extension of authority, specify in the section heading the duration of the extension. For example, the section heading for a proposal that would provide a five-year extension would begin “Five-Year Extension of ...”, rather than just “Extension of ...”.

8. USE OF “SHALL” VS. “WILL”.—For a provision specifying a mandatory action, use “shall”, not “will”. For example, provide that new regulations shall (not “will”) include certain matter. (Note that “will” can appear to be a prediction, rather than a substantive requirement.)
9. SINGULAR VS. PLURAL.—Whenever possible, draft in the singular.
10. DELEGATION.—There is no need to provide express delegation authority; the Secretary of Defense and the Secretaries of the military departments already have authority to delegate their functions (under 10 U.S.C. 133(d), 3013(f), 5013(f), and 8013(f)).